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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 10/092,419 | 03/05/2002 | Charles G. Sleichter III | INSEA-57909 | 2047 |

24201 7590 05/06/2004

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| EXAMINER | |
|---|---|
| LA, ANH V | |

| ART UNIT | PAPER NUMBER |
|---|---|
| 2636 | 6 |

DATE MAILED: 05/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/092,419 | SLEICHTER ET AL. | |
| | Examiner | Art Unit | |
| | Anh V La | 2636 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *30 September 2003 and 09 February 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *2-14,20 and 21* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *2-14,20 and 21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

## DETAILED ACTION

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 2, 8 are rejected under 35 U.S.C. 102(e) as being anticipated by Chung (US 6,077,238).

Regarding claim 2, Chung discloses a system for alerting a user comprising a first vibrator (23 in a first zone) in proximate contact with the user, a second vibrator (23 in other zone) in proximate contact with the user, a first sensor (one of switches 30 of controller 24), a second sensor (other one of the switches 30 of the controller 24), a controller 24 configured to activate the first vibrator in response to a first signal generated by the first sensor, and further configured to activate the second vibrator in

response to a second signal generated by the second sensor (abstract, column 2, lines 1-23, col. 3, lines 1-15, con. 5, lines 25-30, figures 1-2).

Regarding claim 8, Chung discloses the controller being configured to selectively activate the first vibrator in a predetermined sequence of alert stimulation cycles of sufficient duration, frequency and intensity for stimulating muscle tissue of the user, each alert stimulation cycle having an active portion and an idle portion wherein successive alert stimulation cycles differ in at least one of the intensity, frequency, active portion duration and idle portion duration (col. 2, lines 1-30, col. 3, line 50-col. 4, line 45, col. 5, lines 1-67, col. 6, lines 1-55).

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 3-4, 11, are rejected under 35 U.S.C. 103(a) as being unpatentable over Chung in view of Fromson (US 6,106,576).

Regarding claims 3, 11, Chung discloses all the claimed subject matter as set forth above in the rejection of claim 2, but does not disclose a remote control device, a third signal, a fourth signal (claim 3), a first transmitter, a first receiver (claim 11), a second transmitter, a second receiver (claim 13). Fromson teaches the use of a remote control device 50, a third signal and a fourth signal (102, 104, 106, 108), a first transmitter and a first receiver, a second transmitter and a second receiver (abstract,

figures 1-2). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to include a remote control device, a third signal and a fourth signal, a first transmitter and a first receiver, a second transmitter and a second receiver to the system of Chung as taught by Fromson for the purpose of remotely interfacing the controller. It is old and well-known to use a remote control device to operate an electrical system.

Regarding claim 4, Chung discloses a pad 10 (figure 1).

4. Claims 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chung in view of Atlas(US 5,917,415).

Regarding claims 9-10, Chung discloses all the claimed subject matter as set forth above in the rejection of claim 8, but does not disclose the first sensor being a blood pulse sensor, a blood pressure sensor or a body temperature sensor. Atlas teaches the use of a sensor 20 being a blood pulse sensor, a blood pressure sensor or a body temperature sensor (fig. 1). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to include the first sensor being a blood pulse sensor, a blood pressure sensor or a body temperature sensor to the system of Chung as taught by Atlas for the purpose of providing a signal representative of a bodily function of the user.

5. Claims 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fromson in view of Lunn.

Regarding claim 20, Fromson discloses a method for alerting a user comprising a first vibrator (26 in zone 1) being embedded in a user support pad (fig.1), a second vibrator (26, zone 2), a first signal from an external sensor 102, and a second signal from an external sensor (fig. 10). Fromson does not disclose the second vibrator being retained by a belt. Lunn discloses a belt 18 for enclosing a vibrator 12. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to include a belt for enclosing the first vibrator to the method of Fromson as taught by Lunn for the purpose of more affectively alerting the user.

Regarding claim 21, Fromson discloses the controller being configured to selectively activate the first vibrator in a predetermined sequence of alert stimulation cycles of sufficient duration, frequency and intensity for stimulating muscle tissue of the user, each alert stimulation cycle having an active portion and an idle portion wherein successive alert stimulation cycles differ in at least one of the intensity, frequency, active portion duration and idle portion duration (fig. 1, 10).

6. Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chung in view of Fromson as applied to claim 4 above, and further in view of Lunn.

Regarding claim 5, Chung as modified in view of Fromson discloses all the claimed subject matter as set forth above in the rejection of claim 4, but does not disclose a belt for enclosing the first vibrator. Lunn discloses a belt 18 for enclosing a vibrator 12. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to include a belt for enclosing the first vibrator to the

system of Chung (modified by Fromson) as taught by Lunn for the purpose of more affectively alerting the user.

Regarding claim 6, Chung discloses the first sensor being a manual actuator sensor 30.

Regarding claim 7, Chung discloses the second sensor being a manual actuator sensor 30.

7. Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chung in view of Fromson and Lunn as applied to claim 5 above, and further in view of Atlas.

Regarding claims 12, 14, Chung in view of Fromson and Lunn discloses all the claimed subject matter as set forth above in the rejection of claim 5, but does not disclose the second sensor being a blood pulse sensor, a blood pressure sensor or a body temperature sensor. Atlas teaches the use of a sensor 20 being a blood pulse sensor, a blood pressure sensor or a body temperature sensor (fig. 1). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to include the second sensor being a blood pulse sensor, a blood pressure sensor or a body temperature sensor to the system of Chung (modified by Fromson and Lunn) as taught by Atlas for the purpose of providing a signal representative of a bodily function of the user.

Regarding claims 13, Chung in view of Fromson discloses a second transmitter and a second receiver.

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 20-21, 2, 8-10 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 09/352,429. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 of copending Application No. 09/352,429 teaches all the claimed subject matter as claimed in claims 20-21, 2, 8-10 of the present invention.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

10. Claims 3-7, 11-14 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 19-20 of copending Application No. 09/352,429 in view of Fromson (US 6,106,576).

Regarding claims 3-7, 11-14, claims 1, 19-20 of copending Application No. 09/352,429 recite all the claimed subject matter as claimed in claims 3-7, 11-14 of the present invention, but does not disclose a remote control device, a third signal, a fourth signal, a first transmitter, a first receiver, a second transmitter, a second receiver. Fromson teaches the use of a remote control device 50, a third signal and a fourth signal (102, 104, 106, 108), a first transmitter and a first receiver, a second transmitter and a second receiver (abstract, figures 1-2). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to include a remote control device, a third signal and a fourth signal, a first transmitter and a first receiver, a second transmitter and a second receiver to the system of claims 1, 19-20 of copending Application No. 09/352,429 as taught by Fromson for the purpose of remotely interfacing the controller. It is old and well-known to use a remote control device to operate an electrical system.

This is a provisional obviousness-type double patenting rejection.

11. Claims 2, 8-10, 20-21 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2, 12-13 of U.S. Patent No. 6,087,942. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-2, 12-13 of U.S. Patent No. 6,087,942 recite all the claimed subject matter as claimed in claims 2, 8-10, 20-21 of the present invention.

12. Claims 3-4, 11 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2, 12-13 of U.S. Patent No. 6,087,942 in view of Fromson (US 6,106,576).

Regarding claims 3-4, 11, claims 1-2, 12-13 of U.S. Patent No. 6,087,942 recite all the claimed subject matter as claimed in claims 3, 4, 11 of the present, but does not disclose a remote control device, a third signal, a fourth signal, a first transmitter, a first receiver, a second transmitter, a second receiver. Fromson teaches the use of a remote control device 50, a third signal and a fourth signal (102, 104, 106, 108), a first transmitter and a first receiver, a second transmitter and a second receiver (abstract, figures 1-2). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to include a remote control device, a third signal and a fourth signal, a first transmitter and a first receiver, a second transmitter and a second receiver to the system of claims 1-2, 12-13 of U.S. Patent No. 6,087,942 as taught by Fromson for the purpose of remotely interfacing the controller. It is old and well-known to use a remote control device to operate an electrical system.

13. Claims 5-7, 12-14 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2, 12-13 of U.S. Patent No. 6,087,942 in view of Lunn.

Claims 1-2, 12-13 in U.S. Patent 6087942 recite all the claimed subject matter as claimed in claims 5-7, 12-14 of the present invention, but does not disclose the second vibrator being retained by a belt. Lunn discloses a belt 18 for enclosing a

vibrator 12. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to include a belt for enclosing the first vibrator to the system of U.S. Patent No. 6,087,942 as taught by Lunn for the purpose of more affectively alerting the user.

***Answers to Remarks***

14. Applicant's arguments filed on September 30, 2003 have been fully considered.

15. Applicant's arguments with respect to claims 2-14, 20-21 have been considered but are moot in view of the new ground(s) of rejection.

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anh V La whose telephone number is (703) 305-3967. The examiner can normally be reached on Mon-Fri from 9:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffery Hofsass can be reached on (703) 305-4717. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ANH V. LA
PRIMARY EXAMINER

Anh V La
Primary Examiner
Art Unit 2636

AI
May 03, 2004